IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.MC.No. 2232 of 2007()

(C.C.NO.447 OF 2005 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT. CHANGANASSERY)

PETITIONER: 3RD ACCUSED:

SANDHYA A.K., D/O.KESHAVAN NAMBOOTHIRI,
ATTAYOOR ILLAM, ARIYALOOR, PARAPPANANGADI,
MALAPPURAM.

BY ADV. SMT.SANGEETHA LAKSHMANA

RESPONDENTS: STATE,COMPLAINANT AND ACCUSED 1 & 2:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CC 477 OF 2005 IN THE FILE OF JMFC COURT, CHANGANASSERY).

2. KRISHNAN KUTTY NAIR,
THAZHATHE VEETTIL, VAKATHANAM, KOTTAYAM.

3. V.K. RAJI KRISHNAN,
THANNI MOOTIL VEEDU, VALANJAVATTOM P.O.,THIRUVALLA

4. T.G. RADHA DEVI,
MANIPUZHA VEEDU, NEAR CYCLE MUKKU, KADAPPRA,
MANNAR, ALAPPUZHA.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Cr.M.C.No. 2232 of 2007

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Dated this the 12th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable under Section 420 IPC. She, her estranged husband and her mother in law are the accused in the case. Altogether there are three accused persons. Cognizance has been taken on the basis of final report submitted by the Police. The petitioner has not appeared before the learned Magistrate. Consequently a warrant of arrest has been issued by the learned Magistrate to procure her presence .

2. According to the petitioner, she is absolutely innocent. There is strain in the matrimony and the petitioner has initiated proceedings against her husband under Section 498A IPC. It is totally incorrect to allege or assume that the petitioner had acted in collusion with the husband to commit the offences punishable under Section 420 IPC alleged against her in the present prosecution. The petitioner is willing to surrender before the learned Magistrate and claim discharge under Section 239 Cr.P.C., but she apprehends that application for bail may not be considered by the learned Magistrate, expeditiously. The petitioner wants this Court to consider her prayer for quashing the complaint.

3. I have considered all the relevant inputs and I am certainly of the opinion that it is for the petitioner to appear before the learned

Magistrate and claim discharge under Section 239/240 Cr.P.C. Regarding the contention that the petitioner's application for bail maynot be considered by the learned Magistrate on merits, in accordance with law and expeditiously, I have no reason to assume that the directions under Section 482 Cr.P.C. must be issued to the learned Magistrate. I am satisfied that every court must do the same. The petitioner can appear and appliy for bail. The learned Magistrate must consider the same on merits and pass appropriate orders

4. This Crl.M.C. is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously- on the date of surrender itself.

5. In the peculiar facts and circumstances of the case, I am satisfied that the petitioner can be permitted to appear before the learned Magistrate on 23.7.07. The warrant of arrest issued shall not be executed till that date, I direct.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj